

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of : Scullion et al.

Serial No. : 09/700,512

Examiner: Sherrer

Filed : November 13, 2000

Group Art Unit: 1761

For : A BEVERAGE

**PETITION UNDER 37 C.F.R. §§ 1.181 TO  
WITHDRAW NOTICE OF ABANDONMENT**

Mail Stop: Petitions  
2201 South Clarke Place  
Crystal Plaza 4  
Suite 3C23  
Arlington, VA 22202

Sir:

Applicants, by their attorneys, hereby petition for withdrawal of the Notice of Abandonment mailed March 23, 2004 for the above-identified patent application due to failure to timely file a proper reply to the Office letter mailed on 10 December 2002.

NY02:481466.1

A33718 PCT USA - 072819.0125

PATENT

In accordance with 37 C.F.R. § 1.181(f), this petition is being filed within two months after the applicant was first notified of the abandonment of this application. The facts and circumstances resulting in this petition are as follows:

- I. An Office restriction requirement was mailed by the U.S. Patent and Trademark Office ("PTO") on 27 August 2002,
- II. On 27 September 2002, an amendment was submitted by the Applicants which, *inter alia*, elected Group I for prosecution in response to the 27 August 2002 restriction requirement.
- III. On 10 December 2002, an Office letter was mailed by the PTO which opined that Applicants' 27 September 2002 Amendment was not fully responsive
- IV. On 6 January 2003, before the expiration of the one-month time period to respond to the 10 December 2002 Office letter without extension of time fees, Applicants' attorney held a telephonic interview with Examiner Sherrer to discuss the 10 December 2002 Office letter. Examiner Sherrer agreed to issue an Interview Summary that included a fully responsive election to the 27 August 2002 restriction requirement, and that no further written submission was necessary.
- V. On 6 June 2003, before the expiration of the final six-month time period to respond to the 10 December 2002 Office letter, Applicants' attorney held a second telephonic interview with Examiner Sherrer to discuss the 10 December 2002 Office letter. Examiner Sherrer again indicated that he would issue an Interview Summary that included a fully responsive election to the 27 August 2002 restriction requirement, and that no further written submission was necessary.
- VI. Since Applicants' followed the instructions of the PTO, it is respectfully submitted that the application was not abandoned, and that the Notice of Abandonment of 23 March 13, 2004 was therefore mailed in error.
- VII. Accordingly, withdrawal of the Notice of Abandonment mailed 23 March 13 2004 is respectfully requested, and entry of the attached Amendment is respectfully requested.


A33718 PCT USA - 072819.0125

PATENT

No fee is believed to be due for the filing of this petition. However, the Commissioner is hereby authorized to charge any additional fee to Deposit Account 02-4377.

Respectfully submitted,

April 8, 2004

  
Paul A. Ragusa  
Patent Office Reg. No. 38,587Attorneys for Applicant  
(212) 408-2588Baker Botts LLP  
30 Rockefeller Plaza  
New York NY 1011

Encl.